Exhibit 1.

August 31, 1962

Appeal by People from order dismissing the complaint of the Municipal Court of the South Gate Judicial District, F. W. Bunnett, Judge. Reversed with directions.

CITY ATTORNEY'S SUMMARY OF MATERIAL FACTS BEFORE THE COURT IN THE STATEMENT ON APPEAL.

The pertinent facts in this case are contained in the court's Opinion and Judgment.

OPINION AND JUDGMENT

(Prepared by Court)

This is an appeal by the People. There is no dispute regarding the facts. The trial court dismissed the complaint for the sole reason that the complaint was not signed and filed by the arresting officer but by the assistant chief of police of South Gate.

The complaint charged a violation of Sec. 23102a V.C. (driving while under the influence of intoxicating liquor). Sec. 40302 V.C. provides that for this offense the defendant shall be taken before a magistrate and Sec. 40306a V.C. provides: "Whenever a person is arrested for a misdemeanor and is taken before a magistrate, the arresting officer shall file with the magistrate a complaint. . . ." Because of this section, and the failure of the arresting officer to sign the complaint, the trial judge dismissed the complaint.

This was error for several reasons.

First: In this case a magistrate (the arrest having been made about 2:35 A.M.) was not available

but, pursuant to Sec. 40307 V.C., the defendant was released on bail. Thus literally Sec. 40306 V.C. relied on by defendant-respondent, was inapplicable since it applies only when defendant is taken before a magistrate. While this is a technical answer, so is the claim asserted by defendant-respondent.

Second: V.C. Sec. 40306 requires the arresting officer to *file* the complaint but does not require him to *sign* it. The obvious purpose of the section is to place upon the arresting officer the primary responsibility to see that a complaint is filed. Compare *People v. Biffle* (1950) our CR A 2596 where a somewhat comparable provision in H. & S. Code Sec. 26604 was construed not as an exclusive mode but "to impose on someone in authority the burden of attending to such criminal actions, or prosecutions." We hold that the arresting officer may file the complaint personally or he may activate the machinery which causes the complaint to be filed. It is an old maxim of jurisprudence that "Qui facit per alium facit per se." In either case the purpose of the section has been accomplished when the complaint is filed. In the case at bar the complaint was filed the day of the defendant's arrest and it complies with Penal Code Sec. 740 as to its contents.

Third: However, assuming, without deciding, that the arresting officer was wrong in not signing or filing a complaint, it does not follow that the complaint should be dismissed. The section is not a constitutional re-

quirement nor is it substantive, but only statutory and procedural. There has been no showing of prejudice. The same legislative body that created the requirement may, and has, stated the consequences of failing to follow it. Sec. 960 P.C. provides that "no accusatory pleading is insufficient" because of a defect in form absent "prejudice". The legislature has also told appellate courts in Sec. 1258 P.C. that we must disregard "technical errors or defects". The principle announced in *People v. Washington* (1962), 204 A.C.A. 234, applies here. At P. 237 the court said: "Moreover, failure to impose sentence within the time specified by Section 1191 of the Penal Code is clearly an error of procedure and under California Constitution Article VI, Section 4½, the judgment may not be reversed unless the error complained of has resulted in a miscarriage of justice. (*People v. Zuvela*, 191 Cal. 223 . . .; *People v. Williams*, 24 Cal. 2d 848 . . .)"

Fourth: Before closing this memorandum we should make reference to Sec. 40300 V.C., although not urged by the respondent in this case. That section (which has been strongly relied upon by defendants in other cases) reads as follows: "The provisions of this chapter shall govern all peace officers in making arrests for violations of this code without a warrant for offenses committed in their presence, but the procedure prescribed herein shall not otherwise be exclusive of any other method prescribed by law for the arrest and prosecution of a person for an offense of like grade."

It may well be that the words "shall not otherwise be exclusive" imply that to the extent stated in the first part of the sentence the procedure of the Vehicle Code is exclusive. Such first part however relates only to "arrests" and not to subsequent procedures. We should not assume that the reference to "arrests" alone in the first part was inadvertent because the Legislature in the latter part of the same sentence referred to both "arrest and prosecution" and hence at the moment of enactment was mindful of the difference. Furthermore there is no reason to give a strained construction to Sec. 40300 V.C. in order to reach a technical result which is not meritorious. Thus if there is an implication that the procedure is exclusive, it is exclusive only as to the arrest and not to anything subsequent thereto.

The judgment of dismissal is reversed with directions to try the case.

BY THE COURT

SWAIN
Presiding Judge

SMITH
Judge

Exhibit 2.

In the Supreme Court of the State of California.

In the Matter of the Application of Ramon Novarro For a Writ of Habeas Corpus.

Petition for Writ and Points and Authorities.

Received Sep. 17 1962 Office of the Clerk, Supreme Court, Los Angeles.

John N. Frolich, 411 West 7th St. L. A. 14, Cal.

To the Honorable Justices of the Supreme Court of the State of California:

THE PETITION OF JOHN N. FROLICH respectfully shows: that RAMON NOVARRO is imprisoned, detained, confined and restrained of his liberty by the Sheriff of Los Angeles County PETER PITCHESS, at County Jail in the County of Los Angeles, State of California.

That your petitioner is the attorney of record of the above named prisoner and is personally authorized by said prisoner to make this application in his behalf.

That said imprisonment, detention confinement and restraint are illegal; and that the illegality thereof consists in this, to wit:

Prisoner was charged with violation of V.C. #23102 on February 20th, 1962, on a complaint filed on information and belief, in the Municipal Court, Los Angeles Judicial District, County of Los Angeles, State of California, No. 56957. Said complaint did not give jurisdiction to the Municipal Court in that it was void because it was not filed by the arresting officers as required by V.C. #40306 of the State of California

Prisoner was sentenced to fifteen (15) days in county jail plus $250.00 fine, on June 26, 1962.

A Petition for Hearing of a denial of a Writ of Prohibition by the District Court of Appeal, Second District, was denied by the Supreme Court of the State of California on July 25, 1962 (No. 26535); that said Court had jurisdiction of the matter and an appeal from the sentence was not filed until July 26, 1962; that said appeal was dismissed by the Appellate Department of the Superior Court of the State of California for Los Angeles County, on its own motion, on August 9, 1962, on the ground that it lacked jurisdiction since no appeal was filed while the matter was before the Supreme Court of the State of California.

An appeal was dismissed on August 9th, 1962, and the remittitur was sent down on August 21, 1962. Prisoner has been denied substantive due process under the Fourteenth Amendment to the Constitution of the United States.

That bail has been fixed by Los Angeles Municipal Court or Judge thereof and that the offense is a bailable offense.

That prisoner was arrested on the 20th day of February 1962, and has been in custody continuously since said time.

That said prisoner, RAMON NOVARRO, is not held by virtue of any complaint, indictment, presentment, warrant, or quarantine law, rule, regulation, arrest or order, except as above specifically set out. That no other application for a Writ of Habeas Corpus has been made by or in behalf of said prisoner in regard to said restraint except as follows:

That Petition for Writ of Habeas Corpus was denied by the Superior Court of the State of California, for the County of Los Angeles on August 23rd, 1962. That Petition for Writ of Habeas Corpus was denied by the District Court of Appeal, Second District, of the State of California, on September 13, 1962.

Wherefore, your petitioner prays that a Writ of Habeas Corpus may be granted, directed to the said PETER PITCHESS, Sheriff of Los Angeles County, commanding him to have the said prisoner, RAMON NOVARRO, before said Court, at a time and place therein to be specified, to do and receive what shall then and there be considered by said Court, concerning the person so restrained together with the time and cause of his detention, and said Writ; and that he may be restored to his liberty.

Dated: September, 1962.

JOHN N. FROLICH
JOHN N. FROLICH

State of California, County of Los Angeles—ss.

I, the undersigned, say: I am the petitioner named in the foregoing petition; that I have read the said petition and know the contents thereof, and that the same is true of my own knowledge, except as to the matters which are herein stated on my information or belief, and as to those matters that I believe it to be true.

I certify under penalty of perjury, that the foregoing is true and correct.

Executed on September, 1962 at Los Angeles, California.

JOHN N. FROLICH

Points and Authorities.

I

Writ of Habeas Corpus May Issue When Process Is defective, so as to render such process void; or where a party has been committed on a criminal charge without reasonable or probable cause.

Penal Code, Sec. 1487 (3), (7).

"The purpose of a Writ of Habeas Corpus is to test the validity of the process upon which a person is restrained and the jurisdiction of the court issuing such process. (Exparte Long. 114 C 155)."

In Re Jacinte, 8 CA 2 275, 276.

II

Fundamental Constitutional Rights May Be Tested on Habeas Corpus.

"The writ of habeas corpus may not be used as a substitute for an appeal, but if fundamental constitutional rights of the petitioner have been violated, the writ will lie. (*People v. Adamson*, 34 C2 320; *In Re McCoy*, 32 C2 76, 76, 78; *In Re Wallace*, 24 C2 933, 938; *In Re Bell*, 19 C2 488, 494, 507.)"

In Re James, 38 C2 302, 309-310.

III

A Complaint Made on Information and Belief May Be Tested on Habeas Corpus.

". . . The complaint against petitioner by which the Proceeding under which he is held in custody by the sheriff of Sonoma County was instituted, does not purport to have been made on informa-

tion and belief, and was sufficient to authorize issuance of the warrant of arrest. Habeas Corpus will not lie to inquire into the question whether the complainant had *actual* knowledge of the matter as to which he swore positively in such a complaint."

Matter of Application of Vaughan, 169 C 483, 484. (Emphasis by the court.)

IV

No Showing of Prejudice Is Required.

"When the statute is violated, no showing of actual prejudice is required. Prejudice must be presumed. Obviously, if actual prejudice must be shown, the guarantee would become meaningless."

People v. Elliot, 54 C2 498, 505.

V

The Defendant Was Denied Substantive Due Process By the Failure to Follow the Rules of Procedure Established by the Legislation.

The defendant is entitled, under the due process of law clause of the Fourteenth Amendment to the United States Constitution, to be tried by the established rules of procedure determined by the Legislature. *People v. Horiuchi*, 114 CA 415; *People v. Gilbert*, 25 C2 422.

The same rule applies under the due process clause of the *California Constitution, Art. I, 13.*

It is essential that guilt or innocence be established by orderly legal procedure in the administration of justice. *People v. O'Bryan*, 165 C 55.

As stated in *Garner v. Louisiana,* 7 Led 2d 207 at 214:

> ". . . it is as much a denial of due process to send an accused to prison following conviction for a charge that was never made as it is to convict him upon a charge for which there is no evidence to support that conviction."

and recently the Court said, in *Parr v. US* 363 US 370, 304; 4 Led 1277, 1292:

> ". . . Under our vaunted legal system, no man, however, bad his behavior, may be convicted, proven and found guilty in accordant with due process."

(Additional Points and Authorities submitted and filed with Writ of Prohibition, No. 26535, and now on file in the above entitled court.

Dated: September 17, 1962.

Respectfully submitted,

JOHN N. FROLICH